

TITLE 15
LUMMI NATION CODE OF LAWS
LAND USE, ZONING, AND DEVELOPMENT CODE

Enacted: Ordinance 1 (1/5/68)
 Ordinance L 39 (11/12/73)

Amended: Resolution U-44 (8/17/76)
 Resolution 79-62 (6/14/79)
 Resolution 93-62 (4/27/93)
 Resolution 2004-011 (1/19/04)

TITLE 15
LUMMI NATION CODE OF LAWS
LAND USE, ZONING, AND DEVELOPMENT CODE

Table of Contents

Chapter 15.01 Purpose

15.01.010 Purpose.....	1
15.01.020 Compliance with Building Code.....	1
15.01.030 Owner’s Permission Required	1
15.01.040 Interpretation.....	1

Chapter 15.02 Duties and Functions of the Lummi Planning Department and Lummi Planning Commission

15.02.010 Duties and Functions of the Lummi Planning Department	1
15.02.020 Duties and Functions of the Lummi Planning Commission	2
15.02.030 Promulgation of Regulations	2
15.02.040 Entry Upon Private Property.....	3
15.02.050 Comprehensive Land Use Plan.....	3
15.02.060 Land Consolidation Plan.....	3
15.02.070 Official Zoning Map	3

Chapter 15.03 Classification of Uses

15.03.010 Classification of Uses	3
15.03.020 Permitted Uses	3
15.03.030 Accessory Uses	3
15.03.040 Conditional Uses.....	3
15.03.050 Temporary Uses.....	4
15.03.060 Non-conforming Uses.....	4
15.03.070 Prohibited Uses	4

Chapter 15.04 Zone Districts

15.04.010 Zone District Boundary Interpretation.....	4
15.04.020 Residential Zone [R].....	5
15.04.030 Commercial Zone [C]	5
15.04.040 Light Industrial [I].....	5
15.04.050 Forestry [F]	6
15.04.060 Agriculture [A].....	6
15.04.070 Open Space [OS].....	7
15.04.080 Marine [M].....	7
15.04.090 Mixed Uses [Mx]	7
15.04.100 Shoreline Management Overlay	7
15.04.110 Water Resource Protection	7
15.04.120 Culturally Sensitive Area Overlay District.....	8

Chapter 15.05 Permits Generally

15.05.010 Permit Requirements.....	8
15.05.020 Minor Projects Exempt by Rule.....	8
15.05.030 Role of Lummi Planning Department.....	8

Chapter 15.06 Permit Application and Public Notice Procedure

15.06.010 Applications	8
15.06.020 Environmental and Cultural Checklist Required	8
15.06.030 Public Notice Procedures	9
15.06.040 Fee Schedule Authorized	9

Chapter 15.07 Review of Applications

15.07.010 Technical Review Committee Established	9
15.07.020 Purpose and Authority	9
15.07.030 TRC Review Criteria	9
15.07.040 Composition of TRC	10
15.07.050 TRC Chair; Duties	10
15.07.060 Review Procedures and Schedules	10
15.07.070 Use of CEQ Regulations	10
15.07.080 Review Process	10
15.07.090 Once TEA is Filed	11
15.07.100 Further Review for Applications Requiring a TEIS	11
15.07.110 Decisions on Applications	11

Chapter 15.08 Conditional Use Permits

15.08.010 Criteria for Conditional Use Permits	11
15.08.020 Contents of Conditional Use Permit	12
15.08.030 Changes in Non-conforming Uses	12
15.08.040 Expiration of Conditional Use Permits	12
15.08.050 Re-submission of Denied Conditional Use Applications	12
15.08.060 Non-transferable	12

Chapter 15.09 Variances

15.09.010 Purpose	12
15.09.020 Criteria for Granting a Variance	12
15.09.030 Expiration of an Authorized Variance	13

Chapter 15.10 Zone Changes

15.10.010 Zone Change Applications	13
15.10.020 Criteria for Approval of Zone Change Applications	13

Chapter 15.11 Planned Development (PD)

15.11.010 Purpose	13
15.11.020 Criteria to Qualify as a Planned Development	13
15.11.030 Density Allowance	14

Chapter 15.12 Subdivisions

15.12.010 Applicability	14
-------------------------------	----

Chapter 15.13 Prohibited Acts

15.13.010 Prohibited Acts.....	14
15.13.020 Judicial Enforcement	14
15.13.030 Non-Judicial Enforcement by the Director of the Planning Department.....	15
15.13.040 Appeal to the Commission from a Final Decision of the Director of the Planning Department.....	16
15.13.050 Finality of Commission Actions	17
15.13.060 Appeals from the Commission's Decisions; Appeals to the Lummi Tribal Court; Exhaustion of Administrative Procedure	17
15.13.070 Limited Waiver of Sovereign Immunity	18

Chapter 15.14 General Provisions

15.14.010 Effective Date	18
15.14.020 Severability	18
15.14.030 Repeal of Existing Tribal Land Use Codes.....	18

Chapter 15.15 Definitions

15.15.010 Generally	18
15.15.020 Definitions.....	18

<i>Appendix A</i>	23
-------------------------	----

TITLE 15
LUMMI NATION CODE OF LAWS
LAND USE, ZONING, AND DEVELOPMENT CODE

Chapter 15.01 Purpose

15.01.010 Purpose

The use and development of the lands within the Lummi Indian Reservation directly affect the health, safety and general well being of its residents and the political and economic integrity of the Lummi Nation.

The Lummi Indian Business Council (LIBC) recognizes the need for implementation of a comprehensive zoning and development code to ensure orderly growth and protection of the political, economic, social, cultural, and physical integrity of the Tribe. This Title provides controls for land use, development, and zoning for all lands within the exterior boundaries of the Lummi Indian Reservation in order to: Promote the health, safety, and general well being of all residents of the Reservation and the political integrity of the Lummi Nation, and to promote harmony between the many interests on the Reservation; Promote consistency with the goals and policies of the Lummi Comprehensive Land Use Plan, provide clear development standards, establish a desirable pattern of land use, encourage functional and aesthetically compatible grouping of uses, and plan for the present and future use of land for living, commerce, industry, agriculture, resource extraction, and recreation; Ensure an adequate supply of land to support community facilities, roads, and utilities; Ensure proper management and preservation of natural resources, including forests, soils, tidelands, waters, and wildlife and ensuring the highest standards of environmental protection by promoting beneficial uses of land and natural resources; Minimize harmful effects of unmanaged development; Protect areas of archeological and cultural significance; and Ensure that no proposed development with the potential to cause significant impacts to the environment will be permitted before completion of a comprehensive review, in which alternatives to the project and mitigation measures have been considered.

15.01.020 Compliance with Building Code

Uses authorized by this Title or permits issued hereunder must also comply with Title 22 of this code (Building Code.)

15.01.030 Owner's Permission Required

Each application for a land use permit, conditional use permit, temporary use permit, planned development permit, major or minor subdivision, variance, or zone change shall require written permission of the property owner for the proposed construction or land use activity. No land use or development activity shall occur without the owner's permission. For properties with multiple owners, the table in Appendix A indicates the portion of ownership interest necessary for each type of application.

15.01.040 Interpretation

The provisions of this Title are to be interpreted as minimum requirements for the promotion of public health, safety, convenience, order, morals, and general welfare.

Chapter 15.02 Duties and Functions of the Lummi Planning Department and Lummi Planning Commission

15.02.010 Duties and Functions of the Lummi Planning Department

The Lummi Planning Department, acting through the Director or his designee, is authorized to administer this Title, and to perform such duties and functions as are necessary to fulfill the purposes of this Title, including, but not limited to: provide application forms for permits along with any necessary directions and explanations; accept completed applications for processing; facilitate the review of permit applications by the Technical Review Committee; provide technical support for the Lummi Planning Commission in its rulemaking role; prepare and regularly update a Land Consolidation Plan, a Comprehensive Land Use Plan, and

the Official Zoning Map; prepare and submit a budget for completion of its functions under this Title in compliance with Title 28 of this code; investigate alleged violations of this Title and enforce the provisions of this Title; inform and educate the public about planning and zoning issues; establish a fee schedule for review and approval by the Lummi Planning Commission; prepare a map of the culturally sensitive overlay district for approval by the Lummi Sche'leng'en Commission and LIBC as a component of the Official Zoning Map; and prepare certifications for the Lummi Sewer District regarding applicants' status with respect to compliance with applicable tribal codes enumerated in 16.04.080.

15.02.020 Duties and Functions of the Lummi Planning Commission

The Lummi Planning Commission shall:

- (a) adopt pursuant to 15.02.030 such rules and regulations as are necessary for the efficient and effective administration of this Title;
- (b) hear any appeals filed pursuant to 15.13;
- (c) review the annual budget with the Planning Director;
- (d) approve proposed fee schedules, the Comprehensive Land Use Plan and any amendments thereto; and
- (e) review and recommend for approval to the LIBC the Official Zoning Map, including a culturally sensitive overlay district, a Land Consolidation Plan, amendments to such Map and Plan, and proposed amendments to this Title.

15.02.030 Promulgation of Regulations

Notice. Before final adoption of a regulation by the Lummi Planning Commission, the Director of the Planning Department shall post notice of the proposed regulation for public review and comment in at least three public places, inviting written comments and stating a deadline for their submission of not less than thirty (30) days after the posting of notice. The notice shall inform the public where copies of the proposed regulations may be obtained. The Director of the Planning

Department may, but is not obligated to, hold a public hearing; in that event, he will announce the time and place at which oral testimony will be heard.

Adoption. After the closure of public notice and comment period, or closure of the public hearing if one is held, the proposed regulations and all comments received shall be presented to the Commission for its review. The Commission may approve, amend, or disapprove of the proposed regulations, or the Commission may direct the Director of the Planning Department to prepare revisions to the proposed regulations and/or provide for further public review and comment.

Effective Date. A regulation will become effective upon its approval by resolution of the Lummi Planning Commission on the date specified in the resolution. If no date is specified, the effective date shall be the date the resolution is adopted by the Planning Commission.

Available for Inspection. A copy of all regulations will be filed and made available for public inspection at the Planning Department.

Emergency Regulations. If the Planning Director finds that immediate adoption of a regulation is necessary for the protection of the public health, safety, or welfare, and that complying with the notice and comment requirements of this Code would threaten the health or the public interest of the Lummi Nation, the Director may adopt immediately a regulation as an emergency regulation. An emergency regulation shall be effective upon the date of its adoption by the Director.

Notice of the emergency regulation may be posted in a public place, but such posting is solely to inform the public of its adoption, and nothing in this Code shall be construed to prevent the implementation of the emergency regulation upon its adoption by the Director in accordance with this section. An emergency regulation shall not remain in effect more than one hundred and eighty (180) days after its adoption.

15.02.040 Entry Upon Private Property

Members, employees and agents of the Lummi Planning Commission and Lummi Planning Department may enter property subject to this Title for purposes of inspections, surveys, and collecting information in the performance of their functions and duties under this Title. Such entries may occur upon any property, provided they do not unreasonably interfere with the use of the property by persons lawfully entitled to its possession.

15.02.050 Comprehensive Land Use Plan

The Lummi Planning Department shall prepare a comprehensive plan for the Reservation. The Comprehensive Land Use Plan shall be updated and presented to the Lummi Planning Commission for approval every five years, or more frequently, as needed.

15.02.060 Land Consolidation Plan

The Lummi Planning Department shall prepare a Land Consolidation Plan with the goal of consolidating tribal land holdings and reducing or eliminating undivided fractional interests in trust lands. The Land Consolidation Plan shall be presented to the Lummi Planning Commission for recommendation for approval to the LIBC and the Secretary of the Interior pursuant to 25 U.S.C. 2203.

15.02.070 Official Zoning Map

The Lummi Planning Commission and Lummi Indian Business Council have classified and divided the Reservation into zone districts. The boundaries for zone districts established in this code are shown on map(s) entitled the Official Lummi Nation Zoning Map and such mapping, along with all explanatory information, are by reference incorporated into and made a part of this code. The authorized copy of the zoning map shall be prepared by and kept in the Planning Department offices and shall be updated whenever zone district boundary changes occur.

Zone changes for areas of more than 40 acres shall be considered an amendment to the

Official Zoning Map and shall follow the procedure for Code amendments.

Chapter 15.03 Classification of Uses

15.03.010 Classification of Uses

A given land use may be one that is permitted, conditionally permitted, or disallowed—depending on the zone district and the nature of the project.

15.03.020 Permitted Uses

Permitted uses are allowed in a given zone district, subject to development, design and performance standards adopted and issued by the Lummi Planning Department.

15.03.030 Accessory Uses

Accessory uses are allowed land uses, subject to land use and building permit procedures, and, where applicable, conditional use approval. Common examples of accessory uses are garages, storage sheds, and outbuildings. Where permissible, an accessory use is:

- (a) Located on the same parcel as, and supporting or serving a primary use;
- (b) A developed area requiring less than 50% of the lot; and
- (c) Permitted with or supplemental to the primary use.

15.03.040 Conditional Uses

Conditional uses are allowed only after review and grant of a conditional use permit to ensure compatibility with permitted uses and existing development. Conditional use permit applications may be approved subject to performance, design and mitigation criteria. Review and application of limiting criteria are to ensure:

- (a) Comprehensive plan and zoning compliance;
- (b) Compatibility with development in the vicinity;
- (c) No hazardous or disturbing activities or impacts to public health and well being from

operation of the proposed use, or traffic generated by it;

(d) Adequate service of facilities and utilities; and

(e) No natural, environmental or cultural resources loss.

15.03.050 Temporary Uses

Temporary uses are specific activities and uses allowed for relatively short times at definite locations. The permit application and review procedure is the same as for conditional use permits, except that the application and the permit shall identify the time period during which the activity is permitted.

15.03.060 Non-conforming Uses

Non-conforming uses are those uses of land or structures and related activities legally established and existing on the effective date of this code which do not conform to one or more provisions or standards in the code, or are not permissible uses within the relevant zone district. Non-conforming uses may continue, subject to the following limitations. The intent of this section is to identify and retire non-conforming uses by regulating their existence and re-establishment.

(a) If the property used for a non-conforming use lies vacant, under construction, or the use otherwise ceases for a period of six months or longer, the use may not be re-established without conforming to this code.

(b) Expansion of non-conforming uses in the physical size or the intensity of use is not allowed unless all of the non-conforming provisions are corrected and approved by the planning department.

(c) If the property used for a non-conforming use or portion thereof is catastrophically destroyed, reconstruction for purposes of continuing the non-conforming use shall not be allowed beyond the foundation footprint and roof area of the original structure. Such reconstruction may only be allowed if the new structure and uses are found by the Planning Director to be a substantial improvement in

overall conformity to this code.

Voluntary or lawfully required destruction of non-conforming uses shall not be restored except in full conformity with all applicable codes. Repair, alteration, and rehabilitation of non-conforming uses shall be allowed with an approved conditional use permit and building permit. For properties that are non-conforming because they are smaller than the minimum lot size for the relevant zone district, lots of record shall be created, on the date of enactment of this code from contiguous parcels under common ownership, if at least one of them is substandard, to form the minimum lot size or dimensional requirements of the zone district.

15.03.070 Prohibited Uses

The following uses are prohibited in all zone districts unless specifically approved by the Lummi Indian Business Council:

(a) mining, except for sand and gravel extraction;

(b) sanitary landfills;

(c) adult-oriented businesses, including but not limited to retail, service or entertainment facilities that regularly offer live nude or topless entertainment or photographic or electronic depictions of sexual acts; and

(d) heavy industry.

Chapter 15.04 Zone Districts

15.04.010 Zone District Boundary Interpretation

Where uncertainty exists, zone district boundary interpretation shall be guided by these rules:

(a) Where district boundaries are shown along streets, roads, surface water channels, or parcel lines, the centerlines of these mapped features shall be considered the boundary location; or where the district boundary is shown to run parallel to a mapped feature, the offset distance shall be scaled and noted; or where the district boundary is a topographic variation, the ridge or the toe of the slope is considered the boundary location; except

where the district boundary is shown at the saltwater shoreline, it shall be defined according to Title 13, of the Lummi Code of Laws, to be located at the natural vegetation line separating the tidelands and the upland areas.

15.04.020 Residential Zone [R]

The residential zone district provides land for tracts of detached single-family homes with a density range comparable to both suburban and rural residential zones, depending on the type and level of services available and neighboring development. Development will be limited to rural densities, defined as 1-3 dwelling units per acre (DU/ac), where centralized infrastructure is not provided to the site. Suburban residential densities, at 5-7 DU/ac., are allowed when centralized water and sewer services are available to the site. With a planned development permit, land within the residential zone district may also be used for multi-unit residential development with densities of 9-12 DU/ac.

(a) Permitted Uses and Accessory Uses in Residential Zone Subject to design, development and performance standards promulgated by the Lummi Planning Commission, permitted and accessory uses include single-family detached and duplex residences, attached or detached multi-family residential developments with fewer than 5 units, home occupations, outdoor and indoor storage, temporary residences, agriculture, and wood products growing operations.

(b) Conditional Uses in Residential Zone Subject to design, development and performance standards promulgated by the Lummi Planning Commission, conditional uses in the residential zone include automotive repair and retail sales facilities related to home occupations, temporary and permanent business retail, office and service facilities, public and private community facilities, educational and government facilities, multi-family attached or detached developments with 5 or more dwelling units, detached second dwelling units, housing assignments made pursuant to the approved housing assignments policy, temporary residences, and small-scale agricultural and wood-products

harvesting operations.

15.04.030 Commercial Zone [C]

The commercial zone district comprises land suitable for commercial and business uses to meet objectives in economic development and provide employment opportunities to improve the economic conditions of Tribal members.

(a) Permitted and accessory uses in the Commercial Zone Subject to design, development and performance standards promulgated by the Lummi Planning Commission, permitted and accessory uses in the commercial zone include agriculture-related businesses, automotive repair and service businesses, convenience stores, casinos, gas stations, financial institutions, retail food stores, medical offices and clinics, commercial auto and boat parking lots, commercial recreation facilities, restaurants, temporary and permanent retail stores, professional offices, public / government facilities, motels and hotels, and other retail, business, and service uses to be determined by the Planning Commission and designated by administrative rule.

(b) Conditional uses in the Commercial Zone Subject to design, development and performance standards promulgated by the Lummi Planning Commission, conditional uses in the commercial zone include auto body, painting and wrecking facilities, warehouses, taverns and liquor stores, wholesale outlets, food processing facilities, fishing services, boat mechanical repair shops, outdoor heavy equipment storage, private and public community and education / research facilities, outdoor recreation, accessory residential use and home occupations, and temporary homes and events facilities.

15.04.040 Light Industrial [I]

The light industrial zone district provides land suitable for low impact industrial uses to meet objectives in economic development and provide employment opportunities to improve the economic conditions of the Tribe and its members.

(a) Permitted and accessory uses in the Light Industrial Zone Subject to design, development and performance standards

promulgated by the Lummi Planning Commission, permitted and accessory uses in the industrial zone include agriculture-related business, auto body, painting and wrecking facilities, warehouses, wholesale outlets, food processing facilities, manufacturing and assembly facilities, outdoor storage of heavy equipment, power generation, and wood products processing operations.

(b) Conditional uses in the Light Industrial Zone Subject to design, development and performance standards promulgated by the Lummi Planning Commission, conditional uses in the commercial zone include farming, convenience stores, gas stations, restaurants, retail stores, offices, boat building, repair, and fishing service facilities, public and private community, education/ research facilities, accessory and temporary residences.

15.04.050 Forestry [F]

The forestry zone district allocates land suitable for the sustained cultivation and production of forest products and provides land for low-density rural residential development, where such mixed uses are consistent with the Comprehensive plan and Forest management plan.

(a) Permitted and accessory uses in the Forestry Zone Subject to design, development and performance standards promulgated by the Lummi Planning Commission, permitted and accessory uses in the forestry zone include fish growing facilities, outdoor storage, single family and accessory residences, wildlife and game management, and wood products growing and harvesting.

(b) Conditional uses in the Forestry Zone Subject to design, development and performance standards promulgated by the Lummi Planning Commission, conditional uses in the forestry zone district include farming and farm businesses, convenience and retail service stores, warehouses, temporary retail facilities, gravel mines, light industrial uses, outdoor heavy equipment storage, private and public community, recreation, and educational facilities, camping and picnic facilities, home occupations, multi-family residential use, temporary roads and sawmills,

and commercial logging.

(c) Forest Products Special Use District Within the Forestry zone district, land may be designated as within a forest products special use district, established to preserve valuable and productive forests and timber for sustained, highest yield and to plan development of them to harmoniously combine timber harvest with other land uses. The district includes forested tracts of sufficient size, determined to have well-managed, high-value timber and currently in active commercial forestry management. A land use permit is required for harvesting of forest products from this district, and a conditional use permit is required for any other use.

Criteria for forest products special use district are:

(1) classification by the Lummi Natural Resources Department as containing or being effectively managed for high-value commercial timber production.

(2) combination of legal parcels totaling at least 10 acres under forest management system(s).

15.04.060 Agriculture [A]

The agriculture zone district recognizes the importance of agriculture and allows the continuation of farming activities by allocating land for them. It also allocates land for accessory and supporting uses to farming, including residential and resource conservation. Uses like restoration and protection of natural resources and residential development are allowed in addition to farming

(a) Permitted and accessory uses in the Agriculture Zone Subject to design, development and performance standards promulgated by the Lummi Planning Commission, permitted and accessory uses in the Agriculture zone include primary and accessory farming activities, large scale animal raising, agricultural business uses, accessory residential uses, and wood products growing.

(b) Conditional uses in the Agriculture Zone Subject to design, development and performance standards promulgated by the Lummi Planning Commission, conditional uses in the agriculture zone include feedlots and manure processing, temporary agricultural retail outlets, gravel mining, fish and food processing facilities, outdoor storage of heavy equipment, home occupations, and resources management.

15.04.070 Open Spaces [OS]

The open space zone district provides land for preservation, conservation and restoration of environmentally and culturally sensitive areas and for low-impact, outdoor recreational uses.

(a) Permitted and accessory uses in the Open Space Zone Subject to design, development and performance standards promulgated by the Lummi Planning Commission, permitted and accessory uses in the open space zone district include wildlife and natural resource management, parks and recreation facilities, culturally significant facilities, and wood products growing activities.

(b) Conditional uses in the Open Space Zone Subject to design, development and performance standards promulgated by the Lummi Planning Commission, conditional uses in the open space zone district include public facilities, educational / research facilities, and wood products harvesting.

15.04.080 Marine [M]

The marine zone district comprises an area for treaty-reserved and tribally controlled fishing activities, seafood production, and harvest for the benefit of tribal members. All uses remain subject to tribal regulation of harvest and access pursuant to this code.

(a) Permitted and Accessory uses in the Marine Zone Subject to design, development and performance standards promulgated by the Lummi Planning Commission, permitted and accessory uses in the tribal fishing zone district include marine wildlife and game management, resource conservation and restoration activities, all types of subsistence seafood production, commercial fishing, and Tribal access of tidelands, off-shore and

inland waters for recreation.

15.04.090 Mixed Uses [Mx]

The mixed-use zone district is intended for important community centers where planned multiple uses are allowed and desirable. Any proposed use allowed in the immediately adjacent zone districts is allowed in the Mixed Use zone district with a conditional use permit.

15.04.100 Shoreline Management Overlay

Shoreline Management Overlay Districts extend inland 200 feet from the natural upland vegetation line on the ocean shore. Impacts to marine life, tidal and wave action, fishing, aqua-culture, Tribal ownership interests, natural shoreline characteristics, shoreline development and construction, and visual quality shall be mitigated before development within this overlay district will be permitted.

Land use development within the shoreline overlay is restricted, compared to the permitted uses in the underlying land use zone. Land use and development activities require a conditional use permit in the overlay area, including construction of bulkheads, seawalls, and any other shoreline alterations.

The Lummi Planning Commission is authorized to issue design, development and performance standards consistent with the Lummi Coastal Zone Management Plan to govern land use and development activities in this overlay district. The Lummi Coastal Zone Management Plan shall be prepared by the Lummi Natural Resources Department and reviewed periodically by that Department and updated as needed .

15.04.110 Water Resource Protection

Pursuant to Title 17 of this Code, activities in areas surrounding streams, wetlands, and potable water sources, and runoff into water sources are regulated to protect the Reservation's water resources. Permits issued under this Title shall comply with requirements of Title 17.

15.04.120 Culturally Sensitive Area Overlay District

The Culturally Sensitive Area Overlay District includes lands with a high probability of containing culturally sensitive sites. A map outlining the Culturally Sensitive Area Overlay District shall be prepared by the Lummi Planning Department, based on existing published information of cultural sites and historic uses. The map will not identify the location of any site specifically, but will instead define an area in which there is a high probability of finding sites of cultural significance. For proposed development or land use activities within the overlay district, an applicant will be required to conduct an appropriate cultural resources survey before an application is accepted as complete by the Lummi Planning Department. The Lummi Cultural Resources Management Program shall provide informational material for distribution by the Lummi Planning Department to applicants to inform applicants of any requirements for the performance of an appropriate cultural resources survey and the subsequent procedural requirements if a survey reveals the site is of cultural significance. The Lummi Cultural Resources Management Program shall participate in TRC review of all applications for proposed developments or land use activities in the Culturally Sensitive Overlay District.

Chapter 15.05 Permits Generally

15.05.010 Permit Requirements

With the exception of projects determined by the Lummi Planning Commission to be of such insignificant impact that no permit is required, a permit is required for all land use and development activities on the Reservation. The permit requirement applies to all persons and agencies proposing any land use activity or development, including the Lummi Nation or any Department thereof, and any owner or lessee of property on the Reservation.

15.05.020 Minor Projects Exempt by Rule

The Lummi Planning Commission shall adopt regulations to identify those types of small projects for which no permit is necessary.

15.05.030 Role of Lummi Planning Department

The Lummi Planning Department shall publish and make available to the public informational material sufficient to provide notice as to the need for permits for various land use and development activities, and to provide notice as to the type of permit necessary. For land use permits, conditional and temporary use permits, planned development permits, variances and zone changes, major and minor subdivisions, the Lummi Planning Department is authorized to produce application forms, accept applications for filing, reject applications for incompleteness, and facilitate review of applications by the Technical Review Committee.

Chapter 15.06 Permit Application and Public Notice Procedure

15.06.010 Applications

Applications for any land use permit, building permit, variance, temporary use or conditional use permit, planned development permit or zone change shall be made upon forms designed and provided by the Lummi Planning Department. Applications will not be accepted as complete and further processed until all required plans, drawings, maps, environmental and cultural checklists or other documentation and all required fees have been submitted to the Lummi Planning Department. Pre-application conferences with planning department staff are encouraged to provide an opportunity for applicants to ask questions and be fully informed as to any application requirements.

15.06.020 Environmental and Cultural Checklist Required

Each application for a land use permit, building permit, variance, temporary or conditional use permit, planned development permit, zone change, subdivision or variance must include an environmental and cultural checklist providing such information as the Lummi Planning Commission may by rule require, including the identification, description, context of the proposed project, and the potential environmental or cultural resource impacts posed by the project if

permitted.

15.06.030 Public Notice Procedures

(a) For land use permit, building code, variance, planned development, major or minor subdivisions, or conditional use permit applications submitted and accepted as complete, the Planning Department will, by the close of the next business day, post a public notice on the subject property. Posted notices shall be placed in prominent view from the primary road frontage on the right-of-way property line. The posting shall state the type of land use being proposed for the described property along with information and directions for persons wishing to inquire and/or formally support or oppose the proposal. The posting shall be in effect at least 15 days prior to permit issuance or public hearing.

(b) In addition to the posted notice procedure, the Planning Department will mail (first class) written notice to property owners of property located within 300 ft of the parcel boundaries of the property which is the subject of an application for a variance, conditional use permit, planned development permit, subdivision, or zone change. The mailing list shall be obtained from tribal and BIA records or the Whatcom County Assessor, and inaccurate or incomplete information so obtained shall not invalidate the public notice requirements of this section.

(c) A list of permits issued by type and date, shall be posted at the Lummi Planning Department and in the LIBC chambers lobby. The list of permits issued shall include the type of land use proposed, the date issued and the general location of the property.

15.06.040 Fee Schedule Authorized

The Planning Commission is authorized to adopt a fee schedule for permit applications, subdivisions, requests for variances and zone changes. The adopted fee schedule will provide incentive to submit permit applications and obtain permits or any other necessary administrative approval from the Lummi Planning Department before any land use or development activity is begun. Violations of this code may result in the

imposition of civil fines and penalties in addition to enhanced fees for permit applications and requests for administrative action made after any land use or development activity has begun.

Chapter 15.07 Review of Applications

15.07.010 Technical Review Committee Established

The Lummi Technical Review Committee (TRC) is hereby established to implement land use permit policies and procedures that facilitate judicious stewardship and informed decision-making relating to development of Reservation land and natural resources.

15.07.020 Purpose and Authority

The TRC is responsible for environmental review of all applications made under this Title. The TRC is authorized to make recommendations to the Lummi Planning Department following review of land use and development permit applications, and zone change and variance applications, balancing the current values and economic prosperity of the Tribe with the safety, health, and well-being of all residents. The TRC is authorized to recommend approval, denial, conditions of approval, and impact mitigation for any given application, and is responsible for timely review of applications and forwarding of its recommendations to the Planning Department.

15.07.030 TRC Review Criteria

The TRC shall review land use and development applications for compliance with Lummi Tribal Codes, protection of tribal resources and cultural values, and implementation of tribal policies. The TRC shall also review applications for compliance with Federal laws that can affect land use activities on the Reservation, including, but not limited to:

Archeological Resource Protection Act;
National Historic Preservation Act;
Federal Water Pollution Control Act (Clean Water Act);
Rivers and Harbors Act;
Resource Conservation and Recovery Act;
Safe Drinking Water Act;
Clean Air Act;
Endangered Species Act;

National Environmental Policy Act; and Coastal Zone Management Act;

The failure of the TRC, the Planning Department or the Planning Commission to identify a potential or actual violation of one or more of these codes or statutes does not exempt an applicant or owner from any duty to comply with these codes or statutes.

15.07.040 Composition of TRC

The TRC shall be composed of qualified technical staff representatives appointed by the Directors of the following departments and divisions:

- Planning Department, for land use development standards and zoning
- Realty Division, for land ownership, tenure, and real estate title issues
- Cultural Resources Department, for the protection of Tribal interests in cultural, historical resources
- Natural Resources Department, for the protection of land, air, water, and living resources
- Water and Sewer Districts, to verify service and supply
- Construction/Engineering Division, to establish civil engineering standards and provide advice on transportation (rights-of-way) issues
- Other Tribal departments, including LIBC, shall be included in the agenda distribution list and may participate in the review of projects of interest, at their discretion.

15.07.050 TRC Chair; Duties

The TRC chair is the current (permitting) planner and is responsible for setting and distributing the weekly agenda and for transmitting the recommendation of the TRC to the Planning Department.

15.07.060 Review Procedures and Schedules

Application review begins with a pre-application conference. A permit planner will, upon request of the applicant, conduct a pre-application conference, to discuss the project, determine its location, the site conditions and to inform the applicant of permit application requirements, including fees, and any additional documentation, maps, and

information necessary for the environmental checklist. Where relevant, the applicant will be informed of the need for verification of water and sewer service, cultural resources survey procedures, certification of ownership interest, design, development and performance standards, and the expected timetable for permit review and issuance of a decision.

15.07.070 Use of CEQ Regulations

With the exception of the regulations relating to public comment and responses, the federal regulations issued by the Council on Environmental Quality relating to the contents of environmental assessments and environmental impact statements (40 CFR part 1500 et seq., as amended from time to time) shall be used by the TRC and the Planning Department as guidelines for administering this Title, to the extent that the regulations do not conflict with any provision of this Title or any regulations adopted by the Planning Commission.

15.07.080 Review Process

(a) The TRC will review each application at a meeting not more than 10 business days following the application's acceptance as complete and posting of public notices. During this first review, the TRC will review the application and supporting information, any departmental or public comments and determine whether a tribal environmental assessment (TEA) is necessary to determine if significant environmental impacts will result from the proposed project or activity.

If the TRC determines that a TEA is required, the applicant must prepare and submit a TEA before the review process will continue. An applicant may choose to prepare and submit a draft TEA with the initial application.

(b) A TEA will be required unless the TRC finds: That the environmental impacts of the proposal have been adequately addressed in an earlier Tribal environmental assessment (TEA) or Tribal environmental impact statement (TEIS), in which case, the earlier document will be submitted as part of the application; or the proposed activity or project is included within a category of development excluded by Planning Commission rule from

the requirement to prepare a TEA. Such categorical exclusions may be identified by type of activity, location, or other relevant factor used in determining that no environmental review will be required.

(c) If a TEA is not required, the TRC shall issue its recommendation on the application to the Planning Director within 5 business days or shall issue a continuance of the process for not more than 15 business days. The TRC may recommend that the application be denied or issued, issued conditioned on limitations as to size, density, location, operating conditions, or any other mitigation requirements or conditions necessary to avoid significant impacts to the environment or violation of applicable laws.

(d) If a TEA is required, the applicant shall be notified, and the review process will be suspended until the TEA is received.

15.07.090 Once TEA is Filed

(a) Once the TEA is filed and determined to be complete, the Planning Department shall post notice of that fact pursuant to the public notice procedures in 15.06.030(a). The public notice shall provide for 15 business days for public comment. The TRC shall review the TEA and the application at a meeting no more than 15 business days following receipt of the TEA by the Planning Department. The TRC may require additional analyses, information or consultation to be included in the TEA, and will request in writing the additional information from the applicant.

Within 5 business days after the meeting at which an application and TEA have been reviewed, the TRC shall issue a recommended finding to the Planning Director: that the environmental assessment identifies potential significant impacts to the environment requiring the preparation of an environmental impact statement (EIS); or that the TEA will support a finding of no significant impact, and an EIS is not required.

(b) For applications not requiring an EIS, the TRC's report shall also include its recommendation on the application, including any recommended conditions or mitigation requirements if approval of the application is

recommended.

15.07.100 Further Review for Applications Requiring a TEIS

(a) The Planning Department shall notify the applicant in writing of the decision of the Department that an EIS is required. The applicant is responsible for preparation of the Tribal Environmental Impact Statement for the application. The Planning Department shall provide written guidance for applicants on the requirements for an adequate TEIS. The application review process shall be suspended until the applicant submits a draft tribal environmental impact statement.

(b) The applicant shall file a draft Tribal Environmental Impact Statement with the Planning Department, which shall post public notice of the availability of the Draft TEIS and the 15 business day comment period pursuant to the public notice procedures of 15.06.030 (a) and (b). Public comments shall be made available to the TRC, which shall review the application and the Draft TEIS at a meeting no more than 20 business days following the filing of the DEIS.

(c) The TRC may require additional information, analyses or consultation to be submitted by the applicant as part of the final TEIS. Final review of the application by the TRC shall occur at a meeting no later than 10 business days following the filing of the Final TEIS by the applicant. The TRC shall make its findings and recommendations on the application and forward them to the Director.

15.07.110 Decisions on Applications

The Director of the Planning Department shall issue decisions on applications for all land use permits, temporary use permits, building and occupancy permits, conditional use permits, planned development permits, subdivisions, variances, and zone changes.

Chapter 15.08 Conditional Use Permits

15.08.010 Criteria for Conditional Use Permits

Upon receipt of a conditional use permit application, and after TRC review and recommendations, the Planning Director shall

determine whether to deny a permit, or to issue a permit, allowing the proposed use with specific conditions. A conditional use permit may be issued only if the Director finds the use is conditionally permitted under the relevant zoning district; and the application and supporting documentation show the proposed use will: be in compliance with general policies and specific objectives of the Comprehensive Plan, the Tribal code, and will not be detrimental to the health, safety, and general well being of the community; be designed, constructed, maintained, and operated to be harmonious and appropriate to the existing or intended character of the surrounding area, and satisfying the purpose and intent of the zoning district; not be hazardous; and will not create detrimental nuisance impacts including noise, odor, smoke, fumes, light, glare, electrical interference, heat, or vibration beyond those permitted under Planning Commission regulations; be adequately serviced by public facilities and utilities, including streets, police and fire protection, stormwater drainage constructions, water and sewer connection, and other services; not create additional requirements at public cost for facilities and services, nor be detrimental to the economic well being of the Lummi Nation; be designed to avoid interference with, or excessive burden to traffic patterns in the surrounding neighborhood; and not result in detrimental impact to environmental or cultural resources.

15.08.020 Contents of Conditional Use Permit

Conditional use permits shall specify the location, nature, scope, and extent of the proposed use, together with the conditions imposed. Minimum requirements of this or any other title of this code or regulations shall not be waived or reduced by requirements of a conditional use permit.

15.08.030 Changes in Non-conforming Uses

Non-conforming uses may be allowed to expand or increase in intensity by a conditional use permit, consistent with the policies and limitations of 15.04.

15.08.040 Expiration of Conditional Use Permits

A conditional use permit shall expire twelve months after issuance unless construction, operation, or proposed activity has commenced or the original proponent has applied for and the Director of the Planning Department has granted a one-year extension of the permit.

15.08.050 Re-submission of Denied Conditional Use Applications

An application for a conditional use permit shall not be re-submitted unless the new application is deemed by the Director of the Planning Department to be sufficiently different to constitute a new proposal.

15.08.060 Non-transferable

A conditional use permit may not be transferred to a new owner or operator by lease, sale or otherwise.

Chapter 15.09 Variances

15.09.010 Purpose

The purpose of a variance is to provide a procedure by which a modification of the standards of this Title may be allowed. The variance must be in compliance with the general purpose and intent of this Title. Variances may not allow non-permitted uses or authorize a permitted use on a lot smaller than the minimum lot size for that use.

15.09.020 Criteria for Granting a Variance

Following review and recommendations by the TRC, the Planning Director may grant a variance if all of the following findings are supported by substantial evidence: Because of special adverse circumstances applicable to the subject property or its intended use, strict application of this code would create a substantial undue hardship and deprive the property owner of rights and privileges enjoyed by other property in the area under identical land use classification and regulation. The following conditions apply: Special adverse circumstances include irregular shape, unusual topography, difficult location, surroundings, or other atypical

physical characteristics. Desires of the applicant for particular aesthetic considerations or design preferences, without reference to physical characteristics, do not constitute sufficient undue hardship. The special adverse circumstances necessitating a variance are not the result of the applicant's action or failure to act. Granting the variance will not be detrimental to public health or welfare, or to other property and land uses in the area. The variance is not a grant of special privilege, nor shall a variance be granted for financial reasons alone. The property cannot be reasonably used under the existing zoning and development restrictions.

15.09.030 Expiration of an Authorized Variance

A variance shall expire after one year unless construction has been completed or a valid building permit, in conformance with the variance, is still in effect.

Chapter 15.10 Zone Changes

15.10.010 Zone Change Applications

Applications for zone changes affecting not less than 5 nor more than 40 acres may be initiated on an application form provided by the Lummi Planning Department by property owners with at least 75% cumulative interest in contiguous parcels of at least 5 acres nor more than 40 acres, not subject to probate proceedings. Zone change applications may be submitted with other permit applications for a specific project. Conditions of approval for a zone change application may include covenants and restrictions (C&R) to be recorded on the property's title.

15.10.020 Criteria for Approval of Zone Change Applications

After review and recommendation by the TRC, the Planning Director may grant a zone change if he makes the following findings supported by substantial evidence: The zone change would be consistent with the Comprehensive Plan. The application demonstrates a need for additional land to be allocated for use in the proposed zone: The application includes an explanation of how the proposed change will better serve the interests of the Lummi Nation.

A zone change shall not be approved if it would spot zone, defined as the arbitrary rezone of land incompatible with surrounding land uses; nor may a zone change substitute for a variance.

Chapter 15.11 Planned Development (PD)

15.11.010 Purpose

The planned development permit process is intended to provide mutual benefit to the general public and the applicant alike by allowing innovative and efficient land use and design, permitting greater flexibility in development requirements than is generally permitted, and requiring a higher standard for the provision of amenities. Planned development permits may be granted in any zone district except Open Space and are suitable for any residential, commercial or industrial project on property two acres or larger where the proposed use is a permitted, accessory, or conditional use allowed in the relevant zone district. The Lummi Planning Commission shall adopt design, development and performance standards for proposals for planned developments.

15.11.020 Criteria to Qualify as a Planned Development

To qualify as a planned development, an application must show how the proposed planned development attains all of the following criteria as compared to a proposal under any other permit type: Consistency with the goals, objectives, and policies of the Comprehensive Plan; Creation of less harmful effect on the values, health, safety, and general well being of adjacent property, area residents, and the users of nearby land; Make better use of the characteristics, features, resources, and amenities of the site; Result in lower demands for infrastructure and community services; Demonstrate fewer unmitigated impacts to the environment; Increase land use compatibility between the proposed development and surrounding property and uses; and Minimize adverse impacts to the natural environment and reasonably conserve natural topographic features

15.11.030 Density Allowance

A density allowance of up to 35% greater than the base density in the underlying zone district may be granted with award of a planned development permit.

Following review by the TRC, the Planning Director may grant or deny an application for a planned development permit.

Chapter 15.12 Subdivisions

15.12.010 Applicability

This chapter applies to partitions, lot line adjustments, minor subdivisions creating four or fewer lots, and major subdivisions creating five or more lots. A permit issued by the Lummi Planning Department is required for any of these activities. The Lummi Planning Commission shall promulgate rules governing the process for activities subject to this chapter and establishing standards for the granting of a subdivision permit. Application shall be made upon a form provided by the Lummi Planning Department. Following review by the TRC, the Planning Director may grant or deny an application for a subdivision.

Chapter 15.13 Prohibited Acts, Enforcement, Review, and Appeals

15.13.010 Prohibited Acts

It is civilly prohibited for any person to: forcibly, or by bribery, attempted bribery, threat, or other corrupt practice, obstruct or impede the administration of this Code; commit fraud, or knowingly assist another in the commission of fraud, with the intent to evade or defeat the lawful administration of this Code; falsify or make any material misrepresentation in any permit application or other document, or intentionally withhold information required to be submitted under this Code; violate the provisions of this Code, any regulations promulgated hereunder, the conditions or stipulations of permits issued hereunder, or any order of the Director of the Planning Department or of the Planning Commission issued hereunder; or engage knowingly in any act that obstructs or otherwise interferes with the performance by Lummi Nation employees of their lawful duties under this Code.

15.13.020 Judicial Enforcement

(a) Tribal Court Jurisdiction. Except as otherwise provided in this Code, the Lummi Nation Tribal Court shall have exclusive jurisdiction over all matters concerning the administration and enforcement of this Code; provided, however, that nothing in this Code is intended nor shall it be interpreted to preclude prosecution, or enforcement of Tribal Court judgments in state or federal court pursuant to any applicable state or federal law.

(b) Civil Enforcement and Remedies. The Director of the Planning Department is authorized to enforce the provisions of this Code by filing a civil action in the Tribal Court in the name of the Lummi Nation against any person engaged in an activity or activities prohibited by this Code or the regulations promulgated hereunder and may recover monetary damages, civil penalties, restitution, injunctive or declaratory relief, affirmative remedial action, court costs, investigatory and enforcement costs, attorney's fees, and/or any other relief that is just and equitable under the circumstances, including but not limited to orders for the person: to perform community service and to become informed about the need for compliance with this Code; to pay a civil penalty not exceeding Five Thousand Dollars (\$5,000) per day for each prohibited act for failing to comply with any order of the Director of the Planning Department, the Planning Commission, or the Tribal Court issued pursuant to this Code; to make restitution to the Lummi Nation and to affected persons for the cost of damages and restoration of property or other resource; or to pay the Lummi Nation any monetary benefit derived from the violation of this Code.

(c) Preliminary or Permanent Injunctions. Upon the filing of a motion for a preliminary or permanent injunction by the Director of the Planning Department or any other person designated by the LIBC, or upon its own initiative, the Tribal Court shall issue a preliminary or permanent injunction on the following grounds:

- (1) when an emergency restraining order

has been issued by the Director of the Planning Department under this Code, the Director of the Planning Department has moved for a preliminary or permanent injunction, and it appears by the pleadings or affidavits on file that the Director of the Planning Department is entitled to the relief requested; when it appears by the pleadings or affidavits on file that the commission or continuance of some act would produce great or irreparable injury to the public health, safety, or welfare or to the environment; when it appears that the person sought to be restrained is doing, threatening or is about to do, or is procuring or suffering to be done, some act in violation of this Code, a federal or Lummi Nation law, regulation, ordinance, order, or permit; or in all cases where an injunction would be proper in equity.

The Tribal Court's rules of civil procedure shall otherwise govern the procedures for issuing preliminary or permanent injunctions.

(d) Exclusion. For good and sufficient cause found, the Tribal Court may exclude from the Reservation any person who engages in an activity or activities prohibited by this Code or the regulations promulgated hereunder to the extent such exclusion is not inconsistent with applicable federal and Lummi Nation laws.

15.13.030 Non-Judicial Enforcement by the Director of the Planning Department

(a) Cease and Desist Orders. If the Director of the Planning Department or the Planning Commission has denied, revoked, or suspended a permit under this Code, the Director of the Planning Department may issue an order for the person whose permit has been denied, revoked or suspended to cease and desist his unauthorized activities. The order shall be in writing, describe the unauthorized activity, and advise the person of his right to appeal the Director of the Planning Department's decision denying, revoking, or suspending the permit as provided for in this Code and to show cause why the person should not be ordered to cease and desist from the activity. If the person continues the violation after the Director of the Planning Department issues a cease and desist order,

the Director of the Planning Department may issue an emergency restraining order and/or apply to the Tribal Court for a temporary restraining order or preliminary injunction.

(b) Emergency Restraining Orders

(1) Upon receiving evidence that a person is engaging in any on-Reservation activity regulated by this Code and that the activity may endanger or cause damage to the public health, safety, or welfare, Lummi Nation water, or the environment, the Director of the Planning Department may issue an emergency restraining order and/or apply to the Tribal Court for a temporary restraining order or preliminary injunction. Every emergency restraining order or preliminary injunction order shall: be in writing, endorsed with the date and hour of issuance, and filed with the Planning Commission and Tribal Court within three (3) days of its issuance and entered on their records; define the injury; and expire within such time as is specified therein, not to exceed ten (10) days, unless within that time the Director of the Planning Department requests from the Tribal Court and is granted a preliminary or permanent injunction. For good cause shown, the Commission may extend the emergency restraining order until the Tribal Court rules on the Director of the Planning Department's request for a temporary or permanent injunction.

(2) On at least two (2) days' written notice to the Director of the Planning Department, the person whose activities are subject to the emergency restraining order may appeal the Director of the Planning Department's action to the Commission and seek the dissolution or modification of the emergency restraining order. In that event, the Commission shall hear the appeal in accordance with the procedures set forth in this Code and as expeditiously as the ends of justice require.

(c) Civil Fines. The system of civil fines for violations of this Code, the regulations promulgated hereunder, and the permits issued hereunder, may be established by Commission, subject to approval by the

Business Council; provided, that no fine shall exceed five thousand dollars (\$5,000.00) per day per violation; and provided further, that the imposition of a fine shall constitute a final decision by the Director of the Planning Department and be subject to the appeal procedures set forth in this Code.

15.13.040 Appeal to the Commission from a Final Decision of the Director of the Planning Department

(a) Notice of Appeal. An affected person aggrieved by a final decision of the Director of the Planning Department (“Appellant”) may file a written Notice of Appeal with the Commission, through the office of the Director of the Planning Department, within twenty (20) days of the person’s receipt of the Director of the Planning Department’s decision or within twenty (20) days of publication of the decision, if applicable. Such notice shall identify itself as a Notice of Appeal and state with particularity the basis of the Appellant’s claim that an action of the Director of the Planning Department is erroneous. The Appellant also shall file a copy of the Notice of Appeal with the Director of the Planning Department.

(b) Filing of Materials to Substantiate or Rebut Claim. The Appellant shall, within thirty (30) days from the date of receipt or publication of the Director of the Planning Department’s decision, file with the Commission, through the Office of the Director of the Planning Department, a brief addressing the Appellant’s points on appeal and any other materials, information, or evidence relevant to his, her, or its claim. A copy of the appeal materials shall be served on the Director of the Planning Department, who shall have twenty (20) days from service within which to file with the Commission a responsive brief and any materials, information, or evidence supporting his final decision. Appellant shall have ten (10) days from the receipt of the Director of the Planning Department’s brief and materials to file a reply.

(c) Hearing and Notice. Following the time period for submission of materials provided for in this Section, the Commission shall

schedule a hearing and give the Appellant and the Director of the Planning Department not less than five (5) days’ prior written notice of the hearing. Where more than one person files an appeal from the same final decision of the Director of the Planning Department, the Commission may conduct a single hearing on all appeals, provided that each individual Appellant has the right to appear and participate in full.

(d) Hearing Procedures. At the hearing, the Appellant will be afforded the opportunity to present testimony and evidence and to examine witnesses. Appellants may appear at the hearing for themselves or, at their own expense, be represented by an attorney, or other person authorized by Appellants. The Director of the Planning Department shall have the same rights to participate in the hearing as the Appellant. Hearings shall not be open to the public except upon the request of the Appellant and may be postponed or continued at the discretion of the Commission. All hearing testimony shall be given under oath. The Commission shall conduct the proceedings so that both complaints and defenses are amply and fairly presented. The Commission shall have the authority to administer oaths, issue subpoenas to compel the attendance and testimony of persons and the production of any books, records, and papers of the Appellant or any other affected person or party, and examine under oath, either orally or in writing, any Appellant or agent, or any other witness. The Commission may permit discovery, entertain and dispose of motions and require written expositions of the case as the circumstances justify. Formal rules of evidence shall not apply; the Commission may accept such evidence as it finds relevant and credible. The Commission may require reasonable substantiation of statements or records tendered, the accuracy or truth of which is in reasonable doubt. The hearing shall be on the record, and a permanent record of the hearing shall be made by tape recorder and/or stenographic means. The Commission shall, at the Appellant’s request and sole expense, make and preserve a complete written record of the proceedings.

Without undue delay, the Commission shall render a written decision in accordance with the law and evidence presented and shall

state the basis therefore. If the Commission finds that there was substantial compliance with procedural requirements and that the decision of the Director of the Planning Department was supported by substantial evidence in the record and justified by applicable policies, rules, laws, and regulations, it shall affirm the Director of the Planning Department's decision. If it finds to the contrary, the Commission may overturn the Director of the Planning Department's decision or any part thereof and/or remand the matter to the Director of the Planning Department with directions for further review. All decisions shall be signed by the Chairman of the Commission or other authorized Commission Member. A copy of the decision shall be mailed to the Appellant, certified mail, return receipt requested, and shall inform the Appellant of the right to appeal the decision to the Tribal Court and of the consequences of a failure to appeal. A copy of the decision also shall be served on the Director of the Planning Department.

15.13.050 Finality of Commission Actions

Any decision by the Commission on an appeal from a final decision of the Director of the Planning Department shall be final. If no appeal is timely made to the Lummi Tribal Court, such decision will be final, binding, and enforceable, and will not be subject to any further appeal to the Commission or to any court.

15.13.060 Appeals from the Commission's Decisions; Appeals to the Lummi Tribal Court; Exhaustion of Administrative Procedure

The Lummi Tribal Court shall have exclusive jurisdiction to hear all appeals from final decisions of the Commission. Except as otherwise provided for in the Code, the procedural rules of that court, as set forth in the Lummi Code of Laws and applicable court rules for the Tribal Court, shall apply. No final decision of the Director of the Planning Department may be appealed to the Lummi Tribal Court unless an appeal therefrom has first been timely taken to and decided by the Commission.

(a) Filing a Notice of Appeal to the Lummi Tribal Court. Within twenty (20) days after receipt of a final decision of the Commission, if the Appellant is dissatisfied with the decision of the Commission, he may file an appeal to the Lummi Tribal Court. The procedure for perfecting an appeal to the Tribal Court shall be as provided by the rules of that Court. The party appealing the decision must serve a copy of the Notice of Appeal on any other party and on the Commission. Service shall be made in accordance with the Lummi Nation's Rules of Civil Procedure governing service of process. The Lummi Nation may intervene in a proceeding for review, and, in its discretion, the Tribal Court may allow other affected parties to intervene in the proceedings. Thereafter, the Commission and Director of the Planning Department shall certify and transmit to the Clerk of the Court (a) the administrative record, including all documents, things, transcripts, and other information that formed the basis for the decision or ruling being appealed, or (b) such portions thereof as the Commission, Director of the Planning Department, and the parties may stipulate.

(b) Stay. The filing of a notice of appeal to the Lummi Tribal Court shall not operate as a stay of enforcement of the Commission's decision, but the Tribal Court may order a stay upon such terms as it considers proper.

(c) De Novo Review Not Permitted. The Tribal Court shall consider the appeal only upon the same theories and evidence as were asserted before the Commission. All such appeals shall be upon the administrative record presented to the Commission and shall not be de novo except as otherwise provided in this Section. The Court shall give due weight to the experience, technical competence, and specialized knowledge of the Director of the Planning Department, as well as the discretionary authority conferred upon the Director of the Planning Department.

(d) Leave to Present Additional Evidence. If application is made to the Court for leave to present additional evidence, and if it is shown to the satisfaction of the Court that the additional evidence is material to the issues in

the case, and that there were extraordinary circumstances and good reason for a party's failure to present it in an earlier proceeding, the Court may order that such additional evidence be presented to the Commission upon such conditions as the Court deems proper. The Commission may modify its findings and decision by reason of such additional evidence and shall file with the reviewing court, to become part of the record, the additional evidence, together with any modified or new findings or decision.

(e) Standard of Review. Upon appeal to the Lummi Tribal Court, the Court shall set aside a decision of the Commission only if it finds the decision to be: arbitrary, capricious, or an abuse of discretion; not supported by substantial evidence in the record; or otherwise not in accordance with applicable law.

(f) Decisions of the Lummi Tribal Court. The Tribal Court shall issue a written decision on all appeals, which decision shall be final, unless a timely appeal is filed with the Lummi Tribal Court of Appeals. Appeals to the Tribal Court of Appeals shall be filed and served according to the civil rules for appeals in the Lummi Code of Laws and applicable court rules. The decision of the Lummi Tribal Court shall not be stayed pending an appeal to the Tribal Court of Appeals unless a request for stay is made to and approved by the Tribal Court of Appeals according to the civil rules for a stay and upon such terms as the Court of Appeals deems proper. The decision of the Tribal Court of Appeals on the merits of the appeal shall be final, binding, and enforceable.

15.13.070 Limited Waiver of Sovereign Immunity

The LIBC hereby waives its sovereign immunity from suit and that of the Director of the Planning Department and the Commission for the express and sole purpose of allowing review by the Commission of the Director of the Planning Department's actions and of allowing review by the Lummi Tribal Court and the Tribal Court of Appeals of the Commission's actions under this Code; provided that any such appeal must be timely and properly filed; and provided further, that

such waiver is made only to the extent necessary to subject the Director of the Planning Department, and the Commission to suit for the sole purpose of declaring and adjudging rights and obligations under this Code and the regulations promulgated hereunder and does not waive immunity with respect to suits for monetary damages. This waiver is strictly limited and specifically does not waive the sovereign immunity from suit of the LIBC, nor does it waive the immunity from suit of the Lummi Nation, or any officer, employee or agent thereof for any purpose other than those enumerated in this section.

Chapter 15.14 General Provisions

15.14.010 Effective Date

This title shall take effect thirty days after the date of its enactment by LIBC Resolution.

15.14.020 Severability

If any section, clause, or provision of this code, or its application to any person or circumstance, is declared invalid for any reason by a court of competent jurisdiction, the remaining provisions of the code or application to any other person or circumstance shall still be valid and in effect.

15.14.030 Repeal of Existing Tribal Land Use Codes

Title 15 of the Lummi Nation Code of Laws in effect at the time of the effective date of this Title, is repealed, except Title 15A, which remains in effect.

Chapter 15.15 Definitions

15.15.010 Generally

The following rules of interpretation and construction shall apply throughout Title 15: Words used in the present tense include the future and vice versa; Words in the singular number include a plural condition and vice versa; "Shall" is mandatory and not discretionary; "May" is permissive and discretionary; and gender references are interchangeable.

15.15.020 Definitions

As used in this title:

“Accessory use” means a subordinate land use supporting a primary permitted use located on the same parcel.

“Acre” means a unit of measurement for land area equal to 43,560 square feet (originally measured 165 feet X 264 feet).

“Addition” means any construction or development increasing the size of a building or facility in area, size, mass, or gross floor area.

“Adult Business” means a land use involving the sales, distribution, or display of goods, services, or any other activities that involve any exhibit, reference, or allusion to sexual, pornographic, or other adult themes, whether for profit or free. The definition includes sales or rental of audio or visual media and massage establishments, excepting the uses listed below, and includes all uses providing live adult entertainment, tattooing or body alterations, and any other activities where nudity, anatomically explicit demonstrations or sex-related activities occur. “Adult” means those persons 18 years of age or older. Exceptions include uses providing professional, licensed massage therapy; or providing medically approved services; or commercial retail land uses that limit the stock and trade of adult print and video media or adult-oriented goods to less than five (5) square feet of sales floor area, or less than 5% of total sales floor area, whichever is smaller, provided that this portion of the sales area is not generally accessible to the public, and further provided that if the merchandise on display in this area depicts any nudity or sex-related activities, the merchandise shall be screened in such a manner as to prevent its viewing by the general public.

“Agricultural business” means a primary commercial use serving the needs of area farmers.

“Applicant” means the person or entity requesting, on forms provided by the Planning Department, approval of a lease, permit, license, certificate, or other entitlement for land use.

“Application” means the form and information submitted by an applicant, used to determine either approval or denial of permits or other entitlement for use.

“Approval” means the issuance of a lease, permit, license, certificate or other entitlement for an application accepted as complete.

“Aquaculture” means the farming, handling, harvesting, or culture of food fish, shellfish, or other aquatic plants or animals in fresh or saltwater, and includes development of hatcheries, rearing pens, shellfish rafts, and natural rearing and spawning areas.

“Building” means any structure used or intended for supporting, sheltering, or enclosing any use or occupancy, except mobile homes are not included.

“Campground” means a commercial land use providing temporary transient lodging accommodations for recreational users.

“Commission” means the Planning Commission of the Lummi Nation.

“Community facility” means a public facility owned and used by the Lummi Nation for the general purposes of the Tribe.

“Comprehensive Land Use Plan” means an integrated policy planning document designed to guide land use development decisions, based on consideration of land use alternatives, likely impacts, and potential mitigation. It defines the overall goals and objectives of land use and development in a series of policy statements, reflecting community values.

“Conditional use” means a use not permitted outright by this Title, and permitted only after public review and approval by the Department, and to which special conditions of approval may be attached.

“Cultural Resource” in the traditional view of the Lummi includes, but is not limited to, four major category types: language, including traditional named places and oral history or tradition; traditional cultural properties; historic sites; and archaeological resources.

“Cultural Resources Management Program” means the Lummi Nation Cultural Resource Management Program which consists of three components that perform the following functions:

- 1) Sche’lang’en Department (Cultural Identity);
- 2) Historic Preservation Office (Regulatory Compliance); and
- 3) Cultural Contract Services Department (Archaeology Consultants).

“Design” means the location, size, alignment, configuration, grade, and the construction details of: roadways, streets, easements, and rights-of-way, utilities and drainage facilities, and other specifics of the proposed development plan necessary to ensure conformity of the Comprehensive Plan and this Title.

“Detached housing” means a single-family dwelling unit not attached to any other structure.

“Department” means the Lummi Nation Planning Department.

“Development” means any activity requiring Federal and/or Tribal approval for use, alteration, or activity on land or land resources.

“Director” means the Director of the Lummi Nation Planning Department.

“Duplex residence” means a detached building containing two single-family dwelling units.

“Dwelling unit” means a structure or part of a structure or modular manufactured housing, constructed or installed on a permanent foundation, and used by one family for human habitation, including facilities for cooking, eating, sleeping, toilet and bathing. Does not include tents, recreational vehicles, or travel trailers.

“Environmental assessment (TEA)” means a preliminary environmental analysis used to determine whether a proposed action will result in significant environmental impact, requiring a more detailed TEIS.

“Environmental impact statement (TEIS)” means a public document used to analyze and report on the probable significant impacts and effects of development on the surrounding area, to identify alternatives, and to disclose possible ways to reduce or avoid environmental damage.

“Feed lot” means a confined space used as part of an intensive animal or poultry feeding operation, using outdoor or indoor enclosures to feed forage products not grown or stored in the confined space to animals.

“Finding of non-significant impacts (FONSI)” means a determination that the impacts to the environment, identified in an environmental assessment of a particular development project, are insignificant.

“Fishery” means the collection of all fish and shellfish commonly originating or harvested either commercially or for sport from Puget Sound and its freshwater tributaries, together with the habitat in which they thrive.

“Fish hatchery” means a complex of constructed ponds, basins, channels, weirs, water treatment and delivery systems, laboratories, and accessory uses designed to raise fish from spawning to release or sale.

“Food processing” means an industrial land use to cultivate, harvest, sort, store, wash, trim, package, or ship food products for sale.

“Foundation” means a construction made of masonry, concrete, treated wood, or other material, supporting the structure of a building on the ground surface and conforming to the requirements of the uniform Building Code and Development Code of the Lummi Nation.

“Gravel mine” means a land use providing mineral construction materials important to the Lummi Nation.

“Groundwater” means the water existing beneath the earth’s surface, including that beneath streams and surface water features of the effective area.

“Home occupation” means a small,

commercial or service business operating on the same residential parcel where the operator lives. Synonymous with Cottage industry, home occupations are permitted so long as the scale and intensity of activity is compatible with the surrounding uses and the off-site impacts of the use are comparable to those generated by residential uses.

“Industrial” means a use providing land for development of a broad range of business activities characterized by massive and intensive capitalization of resources and conduct of operations to produce or transform materials for sale. Industrial land uses are categorized by the degree of adverse impact to the natural and socio-economic environment or by creation of hazardous or commonly recognized offensive conditions. “Light industrial” includes component manufacturing, transformation, and assembly land uses, with few to no permanent unmitigated impacts to the natural environment and using light-impact processes and materials. Light industry operations provide socio-economic impacts that are easily absorbed and dealt with by the community. “Heavy industrial” means a primary manufacturing and production land use with unavoidable adverse impacts to the environment and the socio-economic fabric of the region. Despite compliance with performance standards, heavy industries may pollute the air, ground and water; may produce hazardous or nuisance conditions; or may significantly affect the transportation system, infrastructure, and the general social or economic well-being of the community.

“Legal description” means a method of geographically identifying a parcel, acceptable in courts of law.

“Lot” means any parcel of real property approved by a record of survey, plat, parcel map, or subdivision.

“Lot line” means the line bounding and defining the dimensions and area of a real property division. The front lot line parallels the roadway serving the lot. Also called the parcel line.

“Lot line adjustment” means a minor shift of

an existing lot line. It is not a subdivision of property.

“Marina” means a facility providing wet moorage and/or dry storage for pleasure and commercial fishing boats and related equipment, commercial businesses selling boating-related products and services, and/or launching facilities and covered moorage. Marinas may be public or restricted to private use. Marine moorage, outdoor boat storage, and marine retail land uses are included.

“Medical service” means a land use providing public health care including consultation, diagnosis, lab analyses, therapy, and treatment by doctors and dentists; and facilities, including clinics, treatment centers, hospitals, and other facilities for healing.

“Minimum” lot size” means the smallest allowable portion of a parcel determined to be usable for the proposed construction of facilities, according to applicable development standards.

“Mitigation” means the process deemed necessary to lessen potential identified impacts of land use development and/or proposed actions on the environment.

“Motel / hotel” means a commercial land use providing temporary lodging facilities for rent by visitors on a temporary basis, including individual sleeping, bathroom, and parking; and may include cooking facilities. The term includes attached or detached facilities, but not campgrounds.

“Multi-family dwelling” means a single building containing two or more attached residential units.

“Nuisance” means a use of property that interferes with the use of other property and rights of other property owners by causing damage, annoyance, or inconvenience.

“Open space” means any parcel or area of land or water not occupied by structures, hard surfacing, or other impervious surfaces (except pedestrian /bicycle paths) and which is set aside, designated, dedicated, or reserved for active or passive recreation, visual

enjoyment, or critical area buffering. Tidelands are not open space. Open space may be for either public or private use, or for the common use by the occupants of the development which includes the open space.

“Outdoor storage” means a land use providing long-term storage of vehicles and equipment.

“Performance standard” means a criterion regulating nuisance effects which a land use or activity shall not exceed.

“Permit” means a written permission issued by a government official authorizing the permittee to do that which is not illegal, but which is also not allowed without such authority.

“Pre-application conference” means an optional procedure wherein the applicant and TRC staff meet prior to the submittal of a development application. The purpose is to review the preliminary information for completeness and adequacy, consult with the TRC about the intent, standards, and provisions of any applicable regulations, and identify as many problems and opportunities as early as possible.

“Professional office” means a commercial land use providing space for professional or consulting services in law, architecture, engineering, finance, or any other service profession.

“Public facility” means a non-commercial use established for the benefit of the community in which it is located.

“Restaurant” means a commercial land use providing space for on-premises preparation, consumption, retail sales, and service of food and beverages, which may or may not include sale of alcohol.

“Retail food business” means a commercial land use providing space for sale of food and beverages, for off-premises consumption, which may or may not include sale of alcohol.

“Retail sales business” means a commercial land use providing space for purchase, stock, display, and sale of a wide variety of products.

“Right-of-way” means a parcel acquired by dedication or condemnation and intended to be occupied or occupied by a road, street, utility line, or other similar linear uses.

“Single family residence” means a residential unit permanently installed and served by infrastructure.

“Subdivision” means any improved or vacant land divided into two or more legal parcels for future development, lease, or sale. A major subdivision is one creating five or more parcels, while a minor subdivision or short plat is limited to a subdivision totaling four or fewer parcels.

“Tavern or retail liquor sales” means a commercial land use providing space for on-premises (for taverns) or carry-out (for retail stores) preparation, display, consumption, retail sales, and/or service of beer, wine, and/or liquor; according to the regulations of the Lummi Nation Code, Title 20.

“Temporary use” means a use established for a fixed time with the intent to discontinue the use upon expiration of the time period.

“Tideland” means the beach /tide flats area located between upland property and marine water bodies and defined by tidal reference levels; i.e., between ordinary high water mark (OHWM) and extreme low tide.

“Tribe” means the Lummi Indian Nation, its government, and its enrolled members, as represented by the Lummi Indian Business Council (LIBC).

“Warehousing and storage” means an industrial land use providing land for receiving, handling, storing, and shipping goods or produce, except bulk storage of flammable, explosive, or hazardous materials.

“Wholesale business” means a commercial land use providing space for receiving, storing, and shipping of goods for resale.

“Wildlife and game management” means a land use providing land for conservation, reclamation, and restoration of fish and

wildlife habitats.

“Wood products culture” means a forestry land use providing land for planning, growth, and management of marketable timber resources.

“Wood products thinning” means a forestry land use intended to enhance and increase the amount of marketable timber in a management tract.

“Wood products processing” means a forestry land use providing land for logging operations, including temporary sawmills.

Title15pub08

APPENDIX A

Number of owners	Land Use Permit	Conditional Use or Planned Development Permit	Variance or Zone Change	Subdivision
> 20	≥ 51%	≥67%	>75%	BIA Regulations
5-20	≥60%	≥75%	100%	BIA Regulations
≤4	≥75%	100%	100%	BIA Regulations